

PUBLIC MEETING MINUTES

June 7, 2007

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chairman Duncan called the meeting to order at 10:00 a.m.

Members Present

John C. Duncan, Chairman
Lilian S. Shek, Member
Sally M. McKeag, Member
Karen L. Neuwald, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Chairman Duncan called the Board to order for a return to the open session of the May 24, 2007 Board meeting. He reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in May, the Board has issued PERB Decision Nos. 1906-M, 1907, 1908, Administrative Appeal Decision Nos. Ad-363-M and Ad-364-M. The request for injunctive relief in I.R. No. 523 (Amalgamated Transit Union Local 1704 v. Omnitrans) was denied by PERB. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Motion: Motion by Member McKeag and seconded by Member Shek to close the May 24, 2007 public meeting.

Ayes: Duncan, Shek, McKeag, and Neuwald.
Motion Carried.

Chairman Duncan opened the meeting of June 7, 2007 and Member Neuwald led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Neuwald and seconded by Member McKeag that the Board adopt the minutes of the Public Meeting of PERB for April 12, 2007.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Motion: Motion by Member McKeag and seconded by Member Neuwald that the Board adopt the minutes of the Public Meeting of PERB for May 24, 2007.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Chief Administrative Officer Eileen Potter updated the Board on the status of PERB's Los Angeles Regional Office lease negotiations. She stated the Los Angeles staff's preference was to stay where they are presently housed, but if that was not feasible, they offered other site search areas to be pursued. The Department of General Services will advertise for the square footage within the suggested site radius and provide suggested building locations available to rent. Ms. Potter will keep the Board apprised of future developments.

b. Legal Report

General Counsel Tami Bogert reported for the month of May, 77 new charges were filed, staff completed investigations in 48 cases, and a total of 40 informal settlement conferences were held. She also reported that 3 requests for injunctive relief were received and denied by the Board. She reported that briefing continued in the essential employee strike cases and as of next week, briefing by the parties will be complete in 3 of the 4 pending appellate cases. In the case California Faculty Association (CFA) v. PERB, CFA challenged PERB Decision No. 1876-H, which held that parking location, as opposed to parking fees, is outside the scope of representation. Ms. Bogert stated CFA recently filed its opening brief in that case and PERB's brief is due in several weeks. She lastly reported that a published decision by the First District Court of Appeal in the case City and County of San Francisco v. Operating Engineers Local 39 affirmed PERB's jurisdiction over alleged violations of

City Charter provisions relating to employer-employee relations. Member Neuwald asked if there was any indication if the City and County of San Francisco case will be appealed. Ms. Bogert responded that she knew of no indication to date that the City and County of San Francisco would petition the California Supreme Court for review. She stated that there is a 10-day timeframe for purposes of such review and would provide the Board more information on that process following today's meeting.

Chief Administrative Law Judge (ALJ) Bernard McMonigle reported that the administrative law judge report was distributed to the Board for their review. He reported that the ALJs currently have 23 decisions to write and 54 cases were scheduled for formal hearing. He also reported that this fiscal year the ALJs completed 30 formal hearings and issued 34 proposed decisions. A geographic comparison of active cases statewide showed that approximately 42 percent are in Los Angeles, 44 percent in Sacramento, and 14 percent in Oakland. He also noted that a large number of cases being scheduled for hearing are being withdrawn.

Chairman Duncan stated, upon approval of the budget, PERB will be ready to advertise for two new Staff Counsel positions and one ALJ position. Mr. McMonigle reported that he is seeking to fill the ALJ position and will do so by recruiting statewide. Ms. Potter stated that PERB currently has an active ALJ II list with two eligible candidates remaining. PERB will contact those candidates and, as mentioned by Mr. McMonigle, advertise statewide. She also indicated that no exams will be conducted by PERB for the PERB Staff Counsel position nor will any list be established by PERB. Instead, PERB will be advertising through the State Personnel Board and utilizing State agency job opportunities for qualified candidates. She also mentioned that ALJ IIs as well as Attorney IVs are welcome to apply for the anticipated ALJ position.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, stated that the proposed agency fee regulatory package has not yet been submitted to the Office of Administrative Law for final approval and publication. He stated that he will be submitting that package in the near future and included in that packet will be the approved minutes from the April 12, 2007 and May 24, 2007 public meetings.

Mr. Chisholm reported on the following bills of interest to PERB:

Assembly Bill 1194 (Karnette) - this bill proposed to restore to EERA language regarding the right of self representation of employees under EERA that was deleted from the statute several years ago. A hearing is scheduled for next week before the Senate Education Committee.

Assembly Bill 553 (Hernandez) - this bill would amend the MMBA for the purpose of, according to the author, clarifying PERB's exclusive and initial jurisdiction over the essential employee issue that is currently being litigated. This bill has now passed through

the Assembly and will proceed to the Senate and is expected to go to the Senate PE & R Committee.

Assembly Bill 1164 (De Leon) - this child care provider representation bill passed out of the Assembly and is set to go to the Senate.

Member McKeag inquired about Assembly Bill 1463 (Eng). This bill would attempt to bring under EERA joint powers agencies comprised of school districts or other school employers. Mr. Chisholm reported that the bill is pending final passage in the Assembly.

Motion: Motion by Member Shek and seconded by Member McKeag that the Administrative, Legal Reports (including General Counsel and Chief Administrative Law Judge), and Legislative Report be received.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Old Business

Chairman Duncan stated that the Board will now further consider proposals to adopt, amend, or repeal various sections of the Board's regulations concerning proof of support, revocation of proof of support, and other technical changes, pursuant to the February 16, 2007 Notice of Proposed Rulemaking. He also stated that the Board will consider and discuss public comments received at the April 12, 2007 public hearing concerning the proposed rulemaking. He noted that the Board will receive and evaluate additional staff analysis and recommendations and, if deemed appropriate by the Board, will take further action on this matter today. He added that any modifications adopted at today's meeting would require a 15-day notice and further public comment. Chairman Duncan requested Mr. Chisholm of the General Counsel's Office to give a staff analysis and recommendations on the proposals.

Prior to the commencement of today's meeting, Mr. Chisholm distributed to Board members and interested parties, a memorandum (dated June 7, 2007) and attached text of proposed modifications regarding proof of support and other regulations for their review. Mr. Chisholm briefly explained to the Board each recommendation contained in the memorandum. He concluded by suggesting that the current rulemaking package be modified to remove certain proposals and moved forward following issuance of a Notice of Proposed Modifications and further consideration by the Board at its August 16, 2007 public meeting. He also recommended that the issues of revocation and any changes to the provisions concerning allegations of "fraud and coercion" with respect to proof of support be removed from the package for further study and possible future action. He additionally recommended removing from the proposed package, without any direction for further study, the proposals to require different authorization language in the context of a card check recognition process.

Mr. Chisholm also recommended that the General Counsel's Office further research questions of PERB's authority with regard to the adoption of regulations concerning revocation of proof of support. He suggested planning a meeting outside of the formal rulemaking process to

invite interested parties to discuss issues relating to revocation and allegations of misrepresentation, fraud, or coercion concerning proof of support. He noted that PERB has successfully used the workshop process in the past to promulgate and adopt both the Meyers-Milias-Brown Act and agency fee regulations and thus encouraged the Board to do so again regarding the present outstanding issues.

Chairman Duncan thanked Mr. Chisholm for his proposed recommendations to the Board. He also requested PERB staff continue to research closely PERB's legislative authority to adopt such regulations. Member Shek echoed Chairman Duncan's statements and expressed that the importance of the Board's compliance with the legislative intent cannot be over-emphasized and she too encouraged staff to do further research on the Board's fundamental statutory authority. Member Shek stated she also made the same request at the April 12, 2007 public meeting of the Board. Mr. Chisholm reassured the Board that PERB staff intends to do further research on that issue and, if appropriate, make recommendations to address those concerns. He stated at least an interim report will be provided to the Board by the October 11, 2007 public meeting.

Member Neuwald suggested leaving the current regulations as originally written in sections 32700(e)(5), 61020(d)(5), 81020(d)(5), and 91020(d)(5). Her rationale was that those sections created no harm as originally written. Mr. Chisholm explained that the proposed language was purely viewed as clean-up language and, although permissible under OAL's standards for purposes of clarifying the existing regulations, he did not object to Member Neuwald's suggestion. Member McKeag supported Member Neuwald's suggestion to leave the sections as originally written.

Motion: Motion by Member Neuwald and seconded by Member McKeag that: (1) the Board move forward with the recommendation in the June 7, 2007 memorandum prepared by Tami Bogert and Les Chisholm to the Board on proposed modifications to proof of support and other regulations; (2) the General Counsel prepare and issue a Notice of Proposed Modifications with no less than a 15-day written comment period that would allow further consideration by the Board at its August 16, 2007 public meeting; and (3) the proposed modifications would reflect what Mr. Chisholm summarized at today's public meeting and also in the June 7, 2007 memorandum distributed today, with the caveat that the language in sections 32700(e)(5), 61020(d)(5), 81020(d)(5), and 91020(d)(5) not be deleted and stay in the current body of PERB's regulations. With this motion, it is understood that the Board is not making any changes dealing with revocation.

Member Shek stated, in regards to Member Neuwald's Motion in restoring the proposed elimination of section 32700(e)(5), she recalled that PERB staff recommended deleting that section to clarify what proof of support should consist of. Mr. Chisholm stated, at this point, the language in section 32700(e)(5) has not presented any operational problems to PERB or its constituents, and did not feel strongly that the language had to be deleted. He also reassured the Board that PERB staff was contemplating on-going study and conversations with interested parties in the area of proof of support regulations. With that understanding and explanation from Mr. Chisholm, Member Shek noted that section 32700(e)(5) may give the Board a wide spectrum of discretion as to what would constitute proof of support. She also noted for the

record, if the parties were unable to submit the items listed in section 32700(e)(1) through (e)(4), based on the discretion of the Board and its agents, they may submit other support which may be deemed to be satisfactory to the staff. Mr. Chisholm agreed with her statement.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

New Business

None.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through August 16, 2007 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Neuwald and seconded by Member Shek that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Respectfully submitted,

Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Karen L. Neuwald, Chair